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No. 05-7142

IN THE
Supreme Court of the United States

TIMOTHY WILLIAMS,

Petitioner,

v.

WILLIAM OVERTON, ET AL,

Respondents.

JOHN H. WALTON,

Petitioner,

v.

BARBARA BOUCHARD, ET AL,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF OF D.C. PRISONERS' LEGAL SERVICES PROJECT INC., LEGAL AID SOCIETY OF THE CITY OF NEW YORK, OHIO JUSTICE AND POLICY CENTER, PRISON LEGAL NEWS, AND UPTOWN PEOPLE'S LAW CENTER AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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QUESTIONS PRESENTED

1. Whether the Prison Litigation Reform Act of 1995 ("PLRA") mandates the dismissal, without leave to amend, of a prisoner's federal civil rights claim against defendants who were not specifically identified in the plaintiff's previously-filed prison grievance regarding the challenged conduct or conditions.

2. Whether the PLRA provides a "total exhaustion" rule, which requires the dismissal, without leave to amend, of a prisoner's entire federal civil rights complaint—including causes of action that have been administratively exhausted—for failure to plead exhaustion with respect to any one or more causes of action.

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INTEREST OF *AMICI*[1]

Amici are five non-profit public interest and legal services organizations that focus on protecting the constitutional and fundamental rights of individuals incarcerated in American prisons, including protecting prisoners' right of access to the federal courts to redress civil rights violations.

D.C. Prisoners' Legal Services Project, Inc. (the "Project") is a non-profit law firm dedicated to ensuring the humane treatment and protecting the dignity of all persons convicted of or charged with a criminal offense under the laws of the District of Columbia and housed in prisons, jails, or community corrections programs. The Project files both individual and class action suits to protect the rights of clients, and seeks to assure that prisoners are afforded access to petition for redress of violations of their constitutional rights.

The **Legal Aid Society of the City of New York** (the "Legal Aid Society") is a private organization that provides free legal assistance to indigent persons in New York City. Its Prisoners' Rights Project represents prisoners in the New York City jails and the New York State prisons in litigation protecting their constitutional and other legal rights, and has litigated a number of cases involving the Prison Litigation Reform Act's administrative exhaustion requirement, which is at issue in this case. *See Ortiz v. McBride*, 380 F.3d 649

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1 The parties have consented to the submission of this brief, and their letters of consent have been filed with the Clerk. Pursuant to this Court's Rule 37.6, *amici* represent that this brief was not written in whole or in part by counsel for any party, and no person or entity other than *amici* or their counsel contributed money or services to the preparation or submission of this brief.

(2d Cir. 2004); *Johnson v. Testman*, 380 F.3d 691 (2d Cir. 2004); *Mojias v. Johnson*, 351 F.3d 606 (2d Cir. 2003). The Legal Aid Society's Prisoners' Rights Project also has appeared as *amicus* in several prior cases in this Court. *See, e.g., Booth v. Churner*, No. 99-1964, Brief of *Amici Curiae* in Support of Petitioner, 2000 WL 1868111 (Dec. 14, 2000). The Legal Aid Society has an interest in protecting prisoners' individual rights and remedies, as well as its ability to litigate on behalf of its clients, by advocating for appropriate judicial construction of statutes that affect its clients' access to courts.

The **Ohio Justice & Policy Center** (formerly the Prison Reform Advocacy Center) is a public interest, nonprofit law firm dedicated to improving prison conditions and empowering former offenders to become productive members of the community. Established in 1997 and based in Cincinnati, Ohio, the Ohio Justice & Policy Center litigates to enforce constitutional standards regarding medical care, safety and other conditions of confinement, and advises prisoners on how to exhaust their administrative remedies. The Ohio Justice & Policy Center also has worked to educate the Sixth Circuit Court of Appeals about the prison grievance systems that exist in the states comprising the Sixth Circuit. Through its work, the Ohio Justice & Policy Center has emerged as a regional and national expert on various criminal justice issues, prison issues, and prisoners' rights.

Prison Legal News is a non-profit organization that advocates nationally on behalf of those imprisoned in American detention facilities. Prison Legal News publishes a magazine by the same name to educate its readers and the general public about the use of the civil justice system for the vindication of fundamental human and civil rights.

The **Uptown People's Law Center** ("UPLC") is a non-profit legal service center serving the poor and indigent of Chicago. Among other things, the UPLC represents prisoners chal-

lenging prison conditions, parole procedures, and "good time policies" in the Illinois prison system. UPLC frequently faces the issue of administrative exhaustion, both in its formal litigation (*see, e.g.*, *Westefer v. Snyder*, 422 F.3d 570 (7th Cir. 2005)), and in addressing the hundreds of letters it receives from unrepresented prisoners seeking advice on how to properly exhaust claims.

STATEMENT

The Prison Litigation Reform Act of 1995, Pub. L. 104-134, 110 Stat. 1321 (1996) ("PLRA"), provides that a prisoner who brings a claim under 42 U.S.C. § 1983 must first exhaust the administrative remedies available in the prison system. These cases present the question whether courts are permitted to impose additional, judicially-created procedural rules to govern the administrative exhaustion requirement, where such rules interfere with a prisoner's constitutional right of access to the courts and are not a reasonable means of advancing the congressional policies underlying the PLRA. In these cases, the Sixth Circuit joined three other circuits in effectively answering this question in the affirmative, resulting in the dismissal of Petitioners' civil rights claims. Had the alleged deprivation of Petitioners' civil rights occurred in one of the several circuits that have declined to impose these additional procedural rules, Petitioners would have been permitted to present their claims to a federal court. This Court's review is necessary to resolve this deepening split among the circuit courts and to eliminate a lack of uniformity that breeds significant and arbitrary differences nationwide in the vindication of prisoners' rights of access to the courts.

1. "[P]risoners have a constitutional right of access to the courts." *Bounds v. Smith*, 430 U.S. 817, 821 (1977). One of the two principal means for a prisoner to pursue this constitutional right is to file a complaint under the Civil

Rights Act of 1871 (as amended, 42 U.S.C. § 1983). *See Muhammad v. Close*, 540 U.S. 749, 750 (2004).

Congress historically has prescribed limits on the ability of a prisoner to pursue a civil rights claim in federal court. Before the passage of the PLRA, a prisoner's right to initiate a civil rights lawsuit in federal court was subject to the provisions of the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997 ("CRIPA"). In weighing a prisoner's constitutional right of access to the courts against the provisions of the CRIPA, this Court in 1992 explained: "[t]he first of the principles that necessarily frame our analysis of prisoner's constitutional claims is that federal courts must take cognizance of the valid constitutional claims of prison inmates." *McCarthy v. Madigan*, 503 U.S. 140, 153 (1992).

2. In 1996, Congress passed the PLRA, which included a revised administrative exhaustion provision stating that no action shall be brought by a prisoner under 42 U.S.C. § 1983 with respect to prison conditions "until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). The PLRA did not change the principle that federal courts must take cognizance of the valid constitutional claims of prison inmates. *See United States v. Wells*, 519 U.S. 482, 495 (1997) (stating that the Court "presume[s] that Congress expects its statutes to be read in conformity with th[e] Court's precedents"). Rather, as the legislative history reveals, the purpose of the PLRA was to "prevent[] inmates from abusing the judicial system," 141 Cong. Rec. S14611 (1995) (statement of Sen. Hatch), while still "allow[ing] meritorious claims to be filed." 141 Cong. Rec. S14611 (1995) (statement of Sen. Thurmond).

In *Booth v. Churner*, 532 U.S. 731 (2001), this Court held that the language of 42 U.S.C. § 1997e(a) made it clear that Congress mandated administrative exhaustion regardless of whether the relief sought was injunctive or monetary. *Id.*

at 741. The Court later explained in *Porter v. Nussle*, 534 U.S. 516 (2002) that, consistent with the overall purpose of the PLRA, the purpose of the PLRA's administrative exhaustion requirement was "to reduce the quantity and improve the quality of prisoner suits." *Id.* at 524.

3. Since *Booth* and *Porter*, the federal circuits have split over the proper interpretation of the PLRA's exhaustion requirement. The Sixth Circuit and three other circuits have added procedural hurdles that are inconsistent with the manner in which this Court in *Booth* and *Porter* reconciled the PLRA's exhaustion requirement with prisoners' right of access to the courts.

The two judicially-created rules that are at issue in this petition are: (i) the rule requiring dismissal (without leave to amend) of a prisoner's claim against defendants who were not named in the plaintiff's prison grievance; and (ii) the "total exhaustion" rule, which requires the dismissal (without leave to amend) of a prisoner's entire complaint—including claims that have been administratively exhausted—for failure to plead exhaustion with respect to any one or more claims.

4. Petitioner Timothy Williams, an inmate in the custody of the Michigan Department of Corrections ("MDOC"), has had "noninvoluting cavernous hemangiomas" in his right arm since birth, which creates the growth of tumors and results in disfigurement of the arm. Pet. App. 2a. A medical doctor authorized surgery to remove the tumors and to straighten Williams' wrist, but the MDOC refused. *Ibid.* Williams filed an administrative grievance challenging the non-approval of surgery, but the grievance and subsequent appeals were denied. *Id.* at 3a. Williams also filed a separate grievance challenging the denial of his request for a "handicapped accessible single cell" to accommodate his condition, but that grievance and subsequent appeals also were denied. Williams then filed a lawsuit under 42 U.S.C.

§ 1983, challenging the denial of his requests for surgery and for a handicapped accessible cell. *Id.* at 3a-4a.

The district court dismissed petitioner's entire complaint, and the Sixth Circuit affirmed. The Sixth Circuit held that although "Williams did file a grievance based on the denial of medical treatment," he nevertheless failed to exhaust his claims because "the grievance failed to specifically name any of the appellees that Williams named in his [§ 1983] complaint." *Id.* at 6a. The Sixth Circuit then applied the "total exhaustion" rule and dismissed Williams' claim for denial of a handicapped cell, reasoning that "[d]espite Williams' apparent exhaustion of this issue, however, [Sixth Circuit precedent] requires that the entire action be dismissed due to Williams' failure to exhaust his medical claims." *Ibid.*

5. Petitioner John Walton, an inmate in the custody of the MDOC, filed a prison grievance in April 2002. Pet. App. at 39a. In his grievance, Walton, an African American, charged Assistant Deputy Warden Bobo with racial discrimination for imposing a disciplinary measure against Walton that was more severe than a disciplinary measure imposed against a white inmate who engaged in similar conduct. *Ibid.* Walton's grievance was denied, as were his administrative appeals. *Id.* at 39a-40a. Walton then filed a lawsuit under 42 U.S.C. § 1983 against Bobo and other MDOC employees allegedly involved in the decision to discipline Walton. *Id.* at 40a.

The district court dismissed Walton's entire complaint, and the Sixth Circuit affirmed. The Sixth Circuit held that Walton failed to satisfy the PLRA's exhaustion requirements because "[h]e named only ADW Bobo in Step I of his grievance process, and under our precedent that is the only claim that we may consider exhausted." *Id.* at 42a. The Sixth Circuit then dismissed the claim against ADW Bobo, reasoning that "[Walton's] claims as to all other defendants remain un-

exhausted and accordingly the district court properly dismissed the entire complaint under [the Sixth Circuit's] total-exhaustion requirement." *Ibid.*

6. As the petition demonstrates, the Sixth Circuit and the Eighth Circuit hold that a prisoner may maintain a claim under 42 U.S.C. § 1983 only if he or she identifies each of the defendants in his or her prison grievance. *See* Pet. at 11. The Seventh and Ninth Circuits have rejected this requirement. *See id.* at 11-12.

Three circuits—the Third, Sixth and Tenth—apply a "total exhaustion" rule, requiring the dismissal of an entire complaint in the event that one or more of the claims have not been administratively exhausted. *See id.* at 18-20. The Second, Fifth, Seventh and Ninth Circuits have rejected the "total exhaustion" rule. *See id.* at 20-22.[2]

REASONS FOR GRANTING THE WRIT

The decision below is based upon two rulings that contradict prior Court decisions, that operate to unnecessarily deprive prisoners of the right to present meritorious civil rights claims in federal court, and that subvert the purpose of the PLRA. These judicially-created impediments have transformed the constitutional right of access to the courts into a complicated maze of traps for prisoners who seek to vindicate their civil rights in the Third, Sixth, Eighth and Tenth Circuits.

The Sixth Circuit's requirement that a prisoner's civil rights claim must be dismissed if it includes defendants who

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[2] The Ninth Circuit rejected the total exhaustion rule in an opinion issued after the Petition was filed. *Lira v. Herrera*, ---F.3d---, 2005 WL 285015 (9th Cir. Nov. 1, 2005).

were not named in the plaintiff's prison grievance goes beyond the express language of 42 U.S.C. § 1997e(a), which only requires a prisoner to exhaust his or her available administrative remedies prior to filing a § 1983 lawsuit, and goes beyond the requirements of the administrative procedures themselves. The imposition of this judicially-imposed requirement conflicts with the Court's decision in *Sims v. Apfel*, 530 U.S. 103 (2000), in which this Court held that even where exhaustion of administrative remedies is statutorily mandated, a court cannot impose additional technical requirements not prescribed by statute or the prison administrative procedures. Moreover, the Sixth Circuit's requirement effectively shortens the statute of limitations for a prisoner's civil rights claim into a matter of days because a prisoner who fails to identify a particular prison official on the prison grievance form will be barred from later suing that prison official. Indeed, in some state prison systems, the deadline to file a grievance is a mere 48 hours following the precipitating event. The rule, therefore, constitutes a significant interference with a prisoner's constitutional right of access to the courts.

The Sixth Circuit's "total exhaustion" rule is borrowed inappropriately from *Rose v. Lundy*, 455 U.S. 509 (1982), in which this Court adopted such a rule for habeas corpus petitions. The total exhaustion rule in the habeas corpus context furthered the purposes underlying the exhaustion requirement—*i.e.*, federal-state comity and the development of a complete factual record to aid the federal courts. *Id.* at 515, 518-19. Neither rationale supports the adoption of a total exhaustion rule for PLRA cases. *See Wilkinson v. Dotson*, 125 S. Ct. 1242, 1249 (2005) (rejecting argument that permitting prisoner's § 1983 lawsuit without prior exhaustion of state-court remedies would compromise principles of federal-state comity); *Cleavinger v. Saxner*, 474 U.S. 193, 206 (1985) (noting non-judicial nature of prison administrative proceedings).

Further, the total exhaustion rule is significantly harsher than the habeas rule that is purportedly its model. In *Lundy*, the Court acknowledged that a habeas petitioner should generally be allowed to withdraw unexhausted claims and continue with the exhausted claims, rather than mandating dismissal of the entire petition. *Lundy*, 455 U.S. at 520-21. The Court reaffirmed that view in *Rhines v. Weber*, 125 S.Ct. 1528, 1533 (2005). The *Rhines* Court further noted that Congress had added a statute of limitations to habeas petitions since *Lundy*, and, in order to avoid forfeiture of meritorious habeas claims, the Court modified the *Lundy* rule to allow courts to stay petitions containing unexhausted claims to permit those claims to be exhausted. *Id.* at 1533-35. Section 1983 actions, too, are governed by statutes of limitations, and the concerns of the *Rhines* Court are equally applicable to such actions.

I. The Sixth Circuit's Requirement That Prisoners Name All Potential Defendants In Their Prison Grievance Goes Beyond The PLRA's Exhaustion Requirement And Is Contrary To Established Law

The rule imposed by the Sixth Circuit—that a prisoner can only pursue a lawsuit against those defendants who were named in the prisoner's grievance—goes beyond the express language of 42 U.S.C. § 1997e(a) and is inconsistent with the Court's interpretation of the PLRA's exhaustion requirement. The rule also goes beyond the requirements of the state prison grievance procedures themselves, which do not put a prisoner on notice that he or she must identify all persons who may be legally responsible for the challenged conduct or policy. This restrictive rule operates to severely shorten the statute of limitations for a prisoner plaintiff pursuing a § 1983 claim in the Sixth Circuit. In addition, the rule contradicts *Sims v. Apfel*, 530 U.S. 103 (2000), in which this Court held that even where exhaustion of administrative

remedies is statutorily mandated, a court cannot impose additional exhaustion requirements.

1. The PLRA mandates exhaustion of available administrative remedies. It reads: "No action shall be brought with respect to prison conditions under [42 U,S.C. § 1983] or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative *remedies* as are available are exhausted." 42 U.S.C. § 1997e(a) (emphasis added). The statute says nothing about naming all of the individual perpetrators of a claimed civil rights violation during the prison grievance process, and does not put potential plaintiffs on notice of any such requirement.

2. The rule that the Sixth Circuit has adopted, permitting a prisoner's lawsuit to proceed only if the defendants were all identified in the prisoner's administrative grievance, goes far beyond the exhaustion of administrative remedies, the plain language of the PLRA, and congressional intent. The proceedings below in the *Williams* case illustrate the consequences of the rule. Petitioner Williams requested authorization for surgery to alleviate the pain in his tumor-ridden hand, but the MDOC denied his request. The district court found that Williams fully utilized the procedures made available by the MDOC to challenge the failure of prison officials to authorize his hand surgery. *See* Pet. App. at 16a ("The documentation which he attaches to the complaint does in fact indicate that Plaintiff fully prosecuted a grievance relating to the quality of medical care received for his condition and expressing concern as to when surgical intervention would be authorized."). Williams pursued his administrative remedy—a surgical procedure to relieve the pain in his hand—through the initial grievance phase and through the two available administrative appeals. *Id.* at 18a-19a.

There is no question that Williams exhausted the process that was available to him, which satisfies the PLRA ex-

haustion requirement Had the MDOC granted Williams the relief he sought—surgery on his hand—the need for a federal lawsuit would have been obviated, consistent with the purpose of the exhaustion requirement as articulated by this Court. "Congress afforded corrections officials time and opportunity to address complaints internally before allowing the initiation of a federal case. . . . [C]orrective action taken in response to an inmate's grievance might improve prison administration and satisfy the inmate, thereby obviating the need for litigation." *Porter*, 534 U.S. at 525.

Moreover, as articulated by the State of Michigan and the other 49 states in *Booth*, the purpose of the PLRA exhaustion requirement is to "allow[] disputing parties to focus on solutions rather than litigation tactics." *Booth v. Churner*, No. 99-1964, Brief of *Amici Curiae* in Support of Respondents, 2001 WL 57590, *1-2 (Jan. 19, 2001); *accord, Ford v. Johnson*, 362 F.3d 395, 399-400 (7th Cir. 2004) ("Rules of the form 'negotiate now, litigate later' or 'administrative remedies first, litigation second' reflect a belief that postponing suits induces people to concentrate their attention on negotiation or alternative dispute resolution, so that some fraction of the time parties will not need to litigate at all."). Thus, to require a prisoner plaintiff to anticipate in his prison grievance the shape of a federal lawsuit that, ideally, will be obviated by the grievance process, defeats the purpose of the PLRA's requirement of exhaustion of available administrative remedies.

3. Requiring a prisoner plaintiff to identify on a prison grievance form all prospective defendants in a potential civil rights lawsuit presents enormous practical barriers, not intended by Congress, to prisoners' exercise of their constitutional right of access to courts, particularly given the short time frames allowed for the filing of an administrative grievance. In the MDOC, where both Petitioners are inmates, this period is limited to a mere seven days following the precipi-

tating incident. *See* Pet. App. 56a-57a. In some states, this deadline may be as little as 48 hours. *See* Florida Corrections Comm'n 1999 Annual Report, App. 4.3, www.fcc.state.fl.us/fcc/reports/final99/ap4-3.html (last visited Nov. 16, 2005). Thus, in the Sixth Circuit, a prisoner's failure to identify a particular defendant during a one-or two-week period following the precipitating event precludes the prisoner from pursuing a claim against that defendant, regardless of a prisoner's efforts to exhaust available administrative remedies. In contrast to the Federal Rules of Civil Procedure, which liberally permit amendment of pleadings in order to add parties, *see* Fed. R. Civ. P. 15(a) and 21, the rule adopted by the Sixth Circuit shrinks the statute of limitations for a prisoner's § 1983 claim from one or more years into a matter of days.

The rule imposed by the Sixth Circuit requires a prisoner plaintiff not only to sort out facts during a one-or two-week period, but also to formulate legal theories and evaluate issues. A *respondeat superior* theory of liability is not available to a plaintiff in a § 1983 action, *see Polk County v. Dodson*, 454 U.S. 312, 325 (1981), and a plaintiff must identify with particularity those persons who "subject[], or cause[] to be subjected, the complainant to a deprivation of a right secured by the Constitution and the laws." *See Rizzo v. Goode*, 423 U.S. 362, 370-71 (1976). In Williams' case, for instance, to identify defendants in a potential § 1983 action, he would be required to determine which "supervisory official" could be held liable for having "at least implicitly authorized, approved, or knowingly acquiesced in" the decision to deny authorization of hand surgery. *See* Pet. App. at 21a (Magistrate Judge Report and Recommendation), *citing Combs v. Wilkinson*, 315 F.3d 548, 558 (6th Cir. 2002). A requirement to name all litigation defendants within a seven-day period, on pain of forfeiting a valid civil rights claim, would be daunting for a skilled attorney, let alone "the prison grievant [who] is generally the epitome of the lay person, un-

assisted by a trained lawyer, seeking to invoke the legal process." *Thomas v. Woolum*, 337 F.3d 720, 729 (6th Cir. 2003). The Sixth Circuit's rule effectively eliminates a prisoner's right to pursue any but the most elementary § 1983 claim.

4. The Sixth Circuit's rule goes beyond not only the language and intent of the PLRA, but also beyond the requirements of the prison administrative system itself. Many prison grievance systems—including the MDOC's system—do not require prisoners to name all the persons who might be responsible for the actions or policies being challenged. *See* Pet. App. at 52a-58a (MDOC policy). Petitioners complied with the MDOC requirements; both Petitioners filed administrative complaints and pursued them to the final level of review, where they were denied on the merits and not for failure to name particular individuals. *See* Pet. App. 2a-3a, 39a-40a.

Because it imposes requirements beyond those of the administrative system itself, the Sixth Circuit's rule cannot be reconciled with the Court's decision in *Sims v. Apfel*, 530 U.S. 103 (2000). In *Sims*, the plaintiff challenged the denial of her application for social security and disability benefits. She filed a lawsuit after utilizing the administrative procedures made available by the Social Security Act. *Id.* at 105. The Fifth Circuit affirmed the dismissal of her claim because, although she exhausted her administrative remedies, her lawsuit challenging the denial of her benefits was based on *issues* not raised during the administrative process. *Id.* at 106.

This Court reversed, holding that a requirement that the plaintiff exhaust her challenge to the denial of benefits through the administrative review system before filing a lawsuit did not compel the plaintiff to exhaust all *issues*. *Id.* at 111-12. The Court explained that "the desirability of a court imposing a requirement of issue exhaustion depends on the degree to which the analogy to normal adversarial litigation

applies in a particular administrative proceeding." *Id.* at 109. Justice Thomas, writing for four members of the Court, explained that a judicially created issue-exhaustion requirement was inappropriate in light of the informal, non-adversarial nature of the administrative proceedings." *Id.* at 111-12.[3] While *Sims* involved a different kind of administrative exhaustion, its underlying premise, that the judiciary should not impose more detailed technical requirements on an informal administrative process from which they are absent, is equally applicable here.

The MDOC's Policy Directive for Prisoner/Parolee Grievances provides for the filing of an initial grievance within seven days of the grievable incident, and for an investigation and disposition within 15 days thereafter. Pet. App. 56a-57a. A prisoner may appeal an unsatisfactory response to within five days, and prison officials must resolve the appeal within 10 days thereafter. *Id.* at 57a. A prisoner then has 10 days to file a final administrative appeal. *Ibid.* The Policy Directive contemplates informal interviews, but not hearings. *Id.* at 56a-57a. It is difficult to imagine an administrative proceeding that is less akin to adversarial litigation than the prison grievance procedures. Given the nature of the administrative process for resolving prison grievances, the Sixth Circuit's rule cannot be reconciled with *Sims*.

Because the decision below is based on an exhaustion requirement that goes beyond what Congress mandated and

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3 Justice O'Connor, concurring in part and concurring in the judgment, reasoned that the "failure to notify claimants of an issue exhaustion requirement in this context is a sufficient basis for our decision." *Id.* at 113. The MDOC procedures do not notify prisoners that they must identify all persons who may be legally responsible for the challenged conduct or conditions. *See* Pet. App. at 52a-58a.

what the administrative system itself requires, because it will significantly interfere with a prisoner's right to pursue civil rights claims in the Sixth Circuit, and because it contradicts this Court's decision in *Sims*, this Court should grant the petition.

II. Importing The "Total Exhaustion" Requirement From Habeas Corpus Jurisprudence Undermines The Purpose Of The PLRA And Prevents Meritorious Suits From Going Forward

The "total exhaustion" rule applied by the court below is based on the inappropriate importation of habeas corpus principles into civil rights litigation. In contrast to the application of the rule in the habeas corpus context, a total exhaustion rule will not advance the purposes underlying the PLRA or its exhaustion requirement. Further, in light of the statute of limitations that applies to § 1983 actions, a total exhaustion rule will operate to bar meritorious claims—even those that have been administratively exhausted.

The circuits are split on the issue of whether the PLRA prescribes a "total exhaustion" rule, requiring a district court to dismiss a prisoner's federal civil rights complaint in its entirety when the complaint contains one or more claims that have not been administratively exhausted—despite the presence of other exhausted claims. The Third, Tenth and Sixth Circuits have adopted a "total exhaustion requirement," and the Second, Fifth, Seventh, and now the Ninth Circuits have rejected this requirement. *See* Pet. at 16-22; *Lira v. Herrera*, ---F.3d---, 2005 WL 285015, *9-10 (9th Cir. Nov. 1, 2005).

Circuits adopting a total exhaustion rule have expressly reasoned that this Court's adoption of a total exhaustion rule in the habeas corpus context, *see Rose v. Lundy*, 455 U.S. 509 (1982), justifies the adoption of the same rule in the PLRA context. *See Bey v. Johnson*, 407 F.3d 801, 808 (6th

Cir. 2005) ("Because we recognize the correlation between habeas petitions and § 1983 actions, we find it appropriate to interpret the PLRA exhaustion requirement in light of habeas corpus rules."); *Ross v. County of Bernalillo*, 365 F.3d 1181, 1189-90 (10th Cir. 2004) (discussing *Lundy* and adopting the total exhaustion rule in the PLRA context). Both the Second and Ninth Circuits have expressly rejected the importation of the habeas corpus total exhaustion rule into PLRA litigation. *See Lira v. Herrera*, ---F.3d---, 2005 WL 285015, *9-10 (9th Cir. Nov. 1, 2005); *Ortiz v. McBride*, 380 F.3d 649, 660-62 (2d Cir. 2004).

1. The importation of habeas corpus principles into the PLRA based on "the correlation between habeas petitions and § 1983 actions," *see Bey*, 407 F.3d at 808, belies the fact that the distinctions between the two areas of law are important and complex enough to have merited this Court's attention in no less than four opinions over the preceding seven years. *See Wilkinson v. Dotson*, 125 S. Ct. 1242 (2005); *Nelson v. Campbell*, 541 U.S. 637 (2004); *Muhammad v. Close*, 540 U.S. 749 (2004); *Edwards v. Balisok*, 520 U.S. 641 (1997). While the Court has not specifically addressed the exhaustion requirements in these cases, the Court has suggested that the exhaustion requirements for habeas petitions are more stringent than the exhaustion requirements for PLRA actions. *See Muhammad*, 540 U.S. at 751 ("Federal petitions for habeas corpus may be granted only after other avenues of relief have been exhausted. Prisoners suing under § 1983, in contrast, generally face a substantially lower gate, even with the requirement of the Prison Litigation Reform Act of 1995 that administrative opportunities be exhausted first.") (citations omitted).

Neither of the dual rationales underlying this Court's adoption of the total exhaustion rule for habeas corpus petitions applies to § 1983 actions. In *Lundy*, the Court explained that the policy underlying the exhaustion requirement

in habeas corpus law is federal-state comity. *Lundy*, 455 U.S. at 515 ("[A]s a matter of comity, federal courts should not consider a claim in a habeas corpus petition until after the state courts have had an opportunity to act."). The Court reasoned that "a total exhaustion rule promotes comity and does not necessarily impair the prisoner's right to relief." *Id.* at 521. In contrast, the Court has recognized that challenges to the conditions of confinement do not raise the same comity concerns that challenges to the fact or duration of confinement raise. *See Wilkinson v. Dotson*, 125 S. Ct. 1242, 1249 (2005) (rejecting argument that permitting prisoner's § 1983 lawsuit without prior exhaustion of state-court remedies would compromise principles of federal-state comity).

The other rationale for the adoption of the total exhaustion rule in the habeas context was that "federal claims that have been fully exhausted in state courts will more often be accompanied by a complete factual record to aid the federal courts in their review." *Lundy*, 455 U.S. at 518-19. In civil rights cases, there is no analogous requirement that federal courts defer to the findings or legal conclusions of prison grievance administrators. Moreover, this Court has previously noted that prison administrative hearings often will not yield a useful factual record:

> The prisoner was to be afforded neither a lawyer nor an independent nonstaff representative. There was no right to compel the attendance of witnesses or to cross-examine. There was no right to discovery. There was no cognizable burden of proof. No verbatim transcript was afforded. Information presented often was hearsay or self-serving. The committee members were not truly independent. In sum, the members had no identification with the judicial process of the kind and depth that has occasioned absolute immunity.

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Cleavinger v. Saxner, 474 U.S. 193, 206 (1985). Neither of the rationales underlying a total exhaustion rule in the habeas context applies in the PLRA context.

2. In relying on this Court's reasoning in *Lundy*, and adopting a similar total exhaustion rule for PLRA cases, the Sixth and Tenth Circuits have disregarded another key distinction. Because there was no statute of limitations for the filing of habeas corpus petitions when *Lundy* was decided in 1983, the total exhaustion rule did not threaten to extinguish a prisoner's right to bring a habeas corpus petition. At most, it would *delay* a federal court's adjudication of a prisoner's exhausted claims while the prisoner litigated the unexhausted claims through the state court system (or, alternatively, filed a new federal petition containing only the exhausted claims). In contrast, § 1983 claims are subject to statutes of limitations. *See City of Rancho Palos Verdes, California v. Abrams*, 125 S. Ct. 1453, 1460 n. 5 (2005) ("The statute of limitations for a § 1983 claim is generally the applicable state-law period for personal-injury torts."). Thus, the dismissal of an exhausted § 1983 claim, simply because it is presented along with an unexhausted claim, could effectively *bar* a meritorious civil rights claim forever.

This Court previously has recognized the significance of a statute of limitations in the analysis of the total exhaustion rule. In 1996, thirteen years after *Lundy* was decided, Congress passed the Antiterrorism and Effective Death Penalty Act of 1996, which imposed a one-year statute of limitations for federal habeas petitions (which is tolled during the pendency of a state habeas petition). In *Rhines v. Weber*, 125 S. Ct. 1528 (2005), the Court examined the habeas "total exhaustion" requirement for the first time since the passage of the AEDPA. The Court expressly noted the effect of a statute of limitations on the total exhaustion rule:

> As a result of the interplay between AEDPA's 1-year statute of limitations and *Lundy*'s dismissal requirement, petitioners who come to federal court with 'mixed' petitions run the risk of forever losing their opportunity for any federal review of their unexhausted claims.

Id. at 1533. The Court held that if a prisoner had good cause for failure to exhaust a potentially meritorious claim, the petitioner's interest in obtaining federal review of his claims outweighs the competing interests, so that it would be an abuse of discretion to apply the total exhaustion rule and dismiss a mixed petition. *Id.* at 1535.

The interplay between the total exhaustion rule applied in the Sixth and Tenth Circuits and the statute of limitations applicable to § 1983 claims would have the same results recognized by the Court in *Rhines*—it would force prisoners to "run the risk of forever losing their opportunity for any federal review" of their civil rights claims. *Rhines*, 125 S. Ct. at 1533; *see also Herrera*, 2005 WL 285015, at *10 ("[D]ismissal of the action for lack of total exhaustion could result in an inability to pursue the *exhausted* claim, because of a statute of limitations barrier or inability to pay a second filing fee.").

Even where a dismissal under the total exhaustion rule would not operate to bar a claim on statute-of-limitations grounds, it may still jeopardize a prisoner's ability to pursue a valid claim because it would require the payment of a second filing fee. *See* 28 U.S.C. § 1915(b) (requiring that prisoners proceeding *in forma pauperis* pay filing fees in installments). Moreover, the dismissal may constitute a "strike" for purposes of the PLRA's "three strikes rule," which prevents prisoners who have had three actions or appeals dismissed for failure to state a claim, among other reasons, from filing *in forma pauperis*. 28 U.S.C. § 1915(g)).

Because the decision below is based upon a total exhaustion rule that is not mandated by the language of the PLRA, does not advance the policies underlying the PLRA, and unduly interferes with a prisoner's right of access to the federal courts, this Court should grant the petition.

CONCLUSION

Considered separately, the Sixth Circuit's rules governing PLRA exhaustion unduly disadvantage prisoners. Taken together, and given that the Sixth Circuit applies these rules by dismissing claims without leave to amend, they can be insurmountable obstacles to litigation of even the most meritorious claim. The requirement to name each defendant in the administrative grievance multiplies the occasions for uncounselled litigants to make mistakes leading to dismissal of a claim. The total exhaustion rule means that any mistake made in the exhaustion process will lead to dismissal of an entire complaint. Many claims will be time-barred as a result of such dismissals, and many will be effectively barred due to the indigency of the prisoner.

For the foregoing reasons, and for the reasons stated in the petition, the Court should grant the petition for a writ of certiorari.

Respectfully submitted.

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November 22, 2005

Supreme Court, U.S.
FILED
AUG 14 2006
OFFICE OF THE CLERK

Nos. 05-7058 and 05-7142

In The Supreme Court of the United States

LORENZO L. JONES,

Petitioner,

v.

BARBARA BOCK, *et al.*,

Respondents.

TIMOTHY WILLIAMS and JOHN H. WALTON,

Petitioners,

v.

WILLIAM OVERTON and BARBARA BOUCHARD, *et al.*,

Respondents.

On Writs Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

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Petition For Certiorari In 05-7058 Filed October 13, 2005
Petition For Certiorari In 05-7142 Filed October 17, 2005
Certiorari Granted In Both Cases March 6, 2006

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U.S. District Court
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CIVIL DOCKET FOR CASE #: 2:02-cv-74336-VAR

Jones v. MI Dept Corr, et al

Date Filed	#	Docket Text
11/15/2002	*3	COMPLAINT – IFP (DT) (Entered: 11/18/2002)
11/19/2002	*4	OPININION and order by Judge Victoria A. Roberts, of partial dismissal as to defendants State of Michigan and Michigan Department of Corrections and order directing service of remaining defendants by US Marshal without prepayment of fees [EOD Date: 11/22/02] (lh) (Entered: 11/22/2002)
		* * *
01/13/2003	*11	MOTION by plaintiff Lorenzo Jones to name defendants Jane and John Doe with proof of service (no brief) (lh) (Entered: 01/14/2003)
		* * *
01/17/2003	*13	ORDER by Judge Victoria A. Roberts granting motion to name defendants Jane and John Doe by Lorenzo Jones [11-1] [EOD Date 1/22/03] (ew) (Entered: 01/22/2003)
		* * *
02/13/2003	*15	MOTION by defendants' Bock, V. Chaplin, Morrison, Opanasenko to dismiss for failure to comply with the exhaustion requirement of the PLRA with brief, attachment, exhibits A-C,

and proof of service. (PP) (Entered: 02/14/2003)

* * *

02/21/2003 *18 RESPONSE by plaintiff to motion to dismiss for failure to comply with the exhaustion requirement of the PLRA by Bock, V. Chaplin, Morrison, Opanasenko [15-1] with brief, and exhibits 1-5 (PP) (Entered: 02/24/2003)

* * *

03/18/2003 *20 ORDER by Judge Victoria A. Roberts, referring motion to stay discovery by Bock, V. Chaplin, Morrison, Opanasenko [16-1] to Magistrate Judge Steven D. Pepe, referring motion to dismiss for failure to comply with the exhaustion requirement of the PLRA by Bock, V. Chaplin, Morrison, Opanasenko [15-1] to Magistrate Judge Steven D. Pepe, for hearing and determination with proof of service [EOD Date 3/19/03] (dh) (Entered: 03/19/2003)

03/28/2003 *21 SUPPLEMENTAL response by plaintiff to motion response by Lorenzo Jones [18-1], with exhibits. (PP) (Entered: 03/28/2003)

* * *

07/30/2003 *26 REPORT and recommendation by Magistrate Judge Steven D. Pepe that motion to dismiss for failure to comply with the exhaustion requirement of the PLRA by Bock, V. Chaplin, Morrison, Opanasenko [15-1] be

granted in part and that plaintiff's claims against defendants Bock, Chaplin, Konke and Aldabaugh should be dismissed for failure to state claim [EOD Date: 8/1/03] with proof of service (lh) (Entered: 08/01/2003)

* * *

08/08/2003 *28 OBJECTIONS by defendants Opanasenko, Morrison to report & recommendation [26-1] with attachments (ew) (Entered: 08/11/2003)

08/11/2003 *29 OBJECTIONS by plaintiff to report & recommendation [26-1] (ew) (Entered: 08/11/2003)

* * *

09/25/2003 *34 ORDER by Judge Victoria A. Roberts accepting report & recommendation [26-1] with proof of service [EOD Date 9/29/03] (dh) (Entered: 09/29/2003)

09/25/2003 *35 JUDGMENT entered by Judge Victoria A. Roberts for defendants with proof of service [EOD Date: 9/29/03] (dh) (Entered: 09/29/2003)

* * *

11/04/2003 *38 MOTION by plaintiff Lorenzo Jones to reopen time for filing appeal with brief, verfication (dh) (Entered: 11/04/2003)

* * *

11/13/2003 *40 ORDER by Judge Victoria A. Roberts granting motion to reopen time for filing appeal by Lorenzo Jones [38-1]

		[EOD Date 11/14/03], with proof of service. (PP) (Entered: 11/14/2003)
		* * *
11/26/2003	*42	APPEAL by plaintiff Lorenzo Jones of orders [35-1] and [34-1] to USCA – FEE: not paid (do) (Entered: 12/03/2003)

General Docket
US Court of Appeals for the Sixth Circuit
#03-2576

Jones v. Bock

12/15/03	*	Prisoner Case Docketed. Notice filed by Appellant Lorenzo L. Jones. Transcript needed: n (dtk)
	* * *	
4/14/04	*	Appellee LETTER filed notifying they will not be filing a brief. Letter from Linda Olivieri for Appellee Barbara Bock. Certificate of service date 4/12/04 [03-2576] (dtk)
	* * *	
5/12/04	*	BRIEF filed by Lorenzo L. Jones for Appellant Lorenzo L. Jones. Copies: 07. Certificate of service date 5/9/04 Number of Pages: 34. [03-2576] (rgf)
5/12/04	*	APPENDIX filed by Lorenzo L. Jones for Appellant Lorenzo L. Jones. Copies: 07. Certificate of service date 5/9/04 [03-2576] SEE BRIEF FILED 05/12/04. (rgf)
4/15/05	*	CAUSE SUBMITTED on briefs to panel consisting of Judges Batchelder, Cole, Reeves sitting on 06.08.05. [03-2576] (kal)
	* * *	
6/15/05	*	Per Curiam OPINION filed: The judgment of the district court is AFFIRMED. Decision not for publication pursuant to local rule 28(g) [03-2576]. Alice M. Batchelder and R. G. Cole, Circuit Judges, Danny C. Reeves, District Judge (E/KY). (dtk)

7/7/05 * MANDATE ISSUED with no cost taxed [03-2576] (rgf)

* * *

UNITED STATES

DISTRICT COURT NORTHERN DISTRICT

Lorenzo L. Jones/Johnson,

Plaintiff, 02-[74336]

v. [Honorable Victoria A. Roberts
Mag. Judge Steven D. Pepe]

STATE OF MICHIGAN, MICHIGAN DEPARTMENT OF CORRECTIONS, WARDEN, B. BOCK, DEPUTY WARDEN OF PROGRAMS V. CHAPLIN, CLASSIFICATION DIRECTOR, P. MORRISON AND CORRECTIONAL OFFICER OPANASENKO, HEALTH CARE JANE DOE AND JOHN DOE,

Jointly and Severally
Defendant, /

JURY TRIAL DEMANDED

COMPLAINT

THERE IS NO OTHER CIVIL ACTIONS ARISING OUT OF THE SAME TRANSACTION OR OCCURRENCE ALLEGED IN THIS COMPLAINT BETWEEN THE PARTIES HEREIN

/s/ Lorenzo L. Jones Johnson
Lorenzo Jones/Johnson-Pro se Plaintiff

(Filed Nov. 15, 2002)

NOW COMES, the Plaintiff, Lorenzo L. Jones/Johnson, through and by himself, for damages and injunction relief pursuant to 42 U.S.C. Sec 1983, alleging "Prison Officials Required Plaintiff to Work Beyond Plaintiff Physical Capabilities" "Retaliation" and "Harassment" in violation of the First, Eighth and Fourteenth